

Pasquale A. Razzano (7340)
FITZPATRICK, CELLA, HARPER & SCINTO
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New York, New York 10112-3800
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Fax: (212) 218-2200

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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THOIP (A Chorion Limited Company),	:	
	:	
Plaintiff,	:	Civil Action No.: 08-CV-6823 (SAS)
	:	
v.	:	
	:	DECLARATION OF PASQUALE A.
THE WALT DISNEY COMPANY,	:	RAZZANO
	:	
Defendant.	:	
-----	x	

I, Pasquale A. Razzano, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner of the law firm of Fitzpatrick, Cella, Harper & Scinto, admitted to practice in the State of New York and before this Court. I respectfully submit this declaration to respond to the Declaration of Paul M. Fakler ("Fakler Declaration") in support of Plaintiff's request for attorney's fees and costs associated with its Motion to Disqualify Defendant's Counsel.

2. In the Fakler Declaration, Plaintiff requests a total award of fees and costs in the amount of \$52,104.21. It appears, however, that many of the fees and costs listed on the invoices submitted as Exhibit 5 to the Fakler Declaration were incurred before November 17, 2008, the date of the telephone conference with the Court relating to Plaintiff's request for a pre-motion conference. Those pre-conference fees and costs, I submit, should not be awarded here.

3. Specifically, the fees and costs incurred before this date total \$22,714.72 – over 40 percent of the total amount of fees and costs requested by Plaintiff. See entries marked with asterisks on invoices attached as Exhibit 1.

4. Prior to the conference on November 17, The Walt Disney Company (“TWDC”), I, and my firm, had a good faith belief that under the “substantial relationship” test for conflicts, no conflict existed in this matter. In the conference, the Court expressed its preliminary view about my representation of TWDC in this matter and, at Plaintiff’s request, set a very short briefing schedule. At that time, I told the Court I would advise TWDC of the Court’s comments and would try to let Plaintiff’s counsel know as soon as possible if TWDC would consent to my withdrawal.

5. Immediately after that conference, I reported the results of the conference to the in-house counsel for TWDC who is supervising this litigation. Although TWDC and I continued to hold a good faith belief that no conflict existed, I suggested, and we discussed whether, in view of the parties’ expressed desire to try to resolve the case expeditiously through mediation with Magistrate Judge Gorenstein and your Honor’s preliminary remarks, it would be better for both parties for me to withdraw and for TWDC to select new counsel.

6. TWDC took our discussion under advisement and began attempts to identify and retain new counsel. By Friday morning, November 21st of that week, TWDC unfortunately was still unable to make final arrangements to retain such new counsel.

7. During the week of November 17th I was in essentially daily contact with in-house counsel for Disney about this matter. Because those conversations

are privileged, all I can state is that it was not until that Friday morning that I was authorized to telephone counsel for Plaintiff, Mr. Fakler, to advise him that I would be withdrawing and that TWDC had not yet retained new counsel. In that respect, I did not ignore, or intend to ignore, the Court's comments at the November 17th conference.

8. Plaintiff's subsequent request for costs and fees associated with the motion to disqualify was based primarily upon the fact that I did not inform it, between the call with the Court and the day that the motion was due, that I would be withdrawing from this case. For that reason, and because we believed before the conference of November 17th that there was no conflict, we submit that the \$22,714.72 in costs and fees incurred prior to November 17th, the date of the conference call with the Court, as reflected in Exhibit 1, should not be considered as part of the Court's award of costs and fees in connection with this matter.

9. As to the remaining \$29,389.49 requested by Plaintiff, given the Court's comments in the November 17 conference call, the expenditure of an additional nearly \$30,000 to file the motion to disqualify in this matter that was substantially repetitive of Plaintiff's letter to the Court would appear to be excessive.

10. I also note that the amount sought by Plaintiff as evidenced in the various documents submitted by Plaintiff, appear to include time spent on matters not related to the disqualification motion. For example, see the November 17 entry marked as "A" in the attached Exhibit 1, which includes time for Mr. Fakler "meeting with M. Schwimmer re: various other potential infringements of MR. MEN and LITTLE MISS marks." The total for this entry is \$3,217.50. The time spent on this meeting marked "A" is clearly not related to the motion and should, as such, be omitted from Plaintiff's

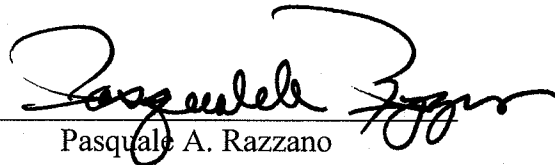
request. While we note the precise amount of time for that meeting is not stated in the entry, we also note that the time records of Mr. Schwimmer (with whom the meeting was held) are redacted for November 17th and should therefore reveal the time spent by Mr. Fakler. In any event, I submit that the fee request should be reduced to eliminate fees and costs spent on other matters besides those actually associated with the motion in question.

11. Additionally, the November 21 entry, marked as "B" in the attached Exhibit 1, includes in part "telephone message from P. Razzano re: withdrawal, various correspondence with M. Schwimmer and THOIP team re: Razzano withdrawal." This, similarly, is not related to the motion itself or any allegedly improper delay on my or TWDC's part and should be omitted from Plaintiff's request. The total for this entry is \$2,524.50. The fee requested in that entry, therefore, should be reduced.

12. Finally, Mr. Fakler's declaration states that he spent 66.7 hours working on the motion, while delegating only 37.1 hours of work to his associate. Another partner, Martin Schwimmer, also spent 14.7 hours working on the motion. Having two partners collectively spend twice as much time as the associate on the matter surely is not the norm and raises questions of efficiency, needlessly inflating the fees actually required. For that and the other reasons discussed above, it appears that the proposed fee and cost request is excessive and should be reduced.


I declare that the foregoing is true and correct.

Dated: January 30, 2009


Pasquale A. Razzano

Certificate of Service

The undersigned attorney hereby certifies that on this the 30th day of January 2009, a true copy of the foregoing document entitled "Declaration of Pasquale A. Razzano" was caused to be served upon counsel for Plaintiff, Paul M. Fakler, at the offices of Moses & Singer LLP, 405 Lexington Avenue, New York, New York 10174-1299, and upon counsel for Defendant, Dale Cendali at the offices of O'Melveny & Myers LLP, 7 Times Square, New York, New York 10036, via electronic filing pursuant to the local rules and Federal Express.



A handwritten signature in black ink, appearing to read "Pasquale A. Razzano", is written over a horizontal line.

EXHIBIT 1

MOSES & SINGER LLP

THE CHRYSLER BUILDING
405 Lexington Avenue, NY, NY 10174-1299
Tel: 212.554.7800 Fax: 212.554.7700
www.mosessinger.com

Federal Taxpayer Identification Number: 13-5259490

Chorion Right Limited
81 Aldwych House
London, England WC2 B4HN

Invoice No.: 65945
January 9, 2009

- *Matter name:* Disney
- *Chorion Right Limited matter #:* 011703-0101

FOR PROFESSIONAL SERVICES rendered through November
30, 2008

\$ [REDACTED]

Miscellaneous disbursements and other charges

\$ [REDACTED]

TOTAL THIS INVOICE

\$ [REDACTED]

PREVIOUS UNPAID BALANCE

\$ [REDACTED]

TOTAL AMOUNT DUE

\$ [REDACTED]

DATE 01/09/09

MOSES & SINGER LLP

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BILLING MEMORANDUM # 255127 THRU 12/11/08

CLIENT 011703 - CHORION RIGHT LIMITED
MATTER 011703-0101- DISNEY

BILLING ATTORNEY 0185 MARTIN SCHWIMMER

***** UNBILLED TIME *****

TIMEKEEPER

DATE TIME RATE VALUE DIARY

mediation and conflict issues; various telephone calls and correspondence with D. Llewellyn re: Razzano conflict and facts supporting disqualification; meeting with J. Greenberger re: conflict research; review results of conflicts research; review documents from Chorion re: Razzano representation; draft pre-motion conference letter.

X 11/13/08 6.50 495.00 3,217.50

Meeting with J. Greenberger re: conflict research; various correspondence with J. Greenberger re: conflict issues; review documents from Chorion re: Razzano representation; draft pre-motion conference letter; correspondence with THOIP team re: pre-motion conference letter.

X 11/14/08 3.30 495.00 1,633.50

Telephone conference with THOIP team re: pre-motion conference letter; revise and send pre-motion conference letter; telephone call from chambers re: pre-motion conference; various correspondence with P. Razzano re: call from chambers; telephone call to chambers re: pre-motion conference; various correspondence with THOIP team and M. Schwimmer re: call from chambers; attention to motion papers for motion to disqualify. Prepare for and participate in pre-motion conference; correspondence with THOIP team re: pre-motion conference; various meetings and correspondence with J. Greenberger re: research assignments and motion papers for motion to disqualify; attention to disqualification motion; meeting with M. Schwimmer re: various other potential infringements of MR. MEN and LITTLE MISS marks.] A

11/17/08 6.50 495.00 3,217.50

Prepare for and participate in pre-motion conference; correspondence with THOIP team re: pre-motion conference; various meetings and correspondence with J. Greenberger re: research assignments and motion papers for motion to disqualify; attention to disqualification motion; meeting with M. Schwimmer re: various other potential infringements of MR. MEN and LITTLE MISS marks.

11/18/08 4.70 495.00 2,326.50

Attention to disqualification motion; review and revise Crossley declaration and Llewellyn declaration; review documents from client supporting motion; various correspondence with J. Greenberger re: motion

11/19/08 3.90 495.00 1,930.50

Attention to motion to disqualify; various correspondence with J. Greenberger re: motion papers and exhibits; correspondence with D. Llewellyn re: declarations.

11/20/08 5.30 495.00 2,623.50

Various correspondence with THOIP team re: Crossley and Llewellyn declarations; revise and finalize Crossley and Llewellyn declarations; draft Fakler declaration;

DATE 01/09/09

MOSES & SINGER LLP

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BILLING MEMORANDUM # 255127 THRU 12/11/08

CLIENT 011703 - CHORION RIGHT LIMITED
MATTER 011703-0101- DISNEY

BILLING ATTORNEY 0185 MARTIN SCHWIMMER

***** UNBILLED TIME *****

TIMEKEEPER

DATE TIME RATE VALUE DIARY

					review documents needed for motion to disqualify; various meetings and correspondence with J. Greenberger re: brief for motion to disqualify; draft and revise brief for motion to disqualify.
11/21/08	5.10	495.00	2,524.50		Various correspondence with THOIP team re: motion to disqualify; telephone call from R. Crossley re: declaration and motion to disqualify; review and revise motion papers; attention to finalizing, filing and service of motion papers; correspondence with P. Razzano re: motion papers; telephone message from P. Razzano re: withdrawal; various correspondence with M. Schwimmer and THOIP team re: Razzano withdrawal.

B

11/30/08	5.50	495.00	2,722.50		Draft Pakler declaration for reply papers on disqualification motion; research for reply brief; begin drafting reply brief for disqualification motion; correspondence with M. Schwimmer re: motion; correspondence with THOIP team re: opposition papers and responses to document requests.
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TIMEKEEPER TOTAL

0185 SCHWIMMER, MARTIN

* 11/07/08	2.80	495.00	1,386.00		Review various correspondence re conflict issue; research re same; review facts in conflict matter;
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DATE 01/09/09

MOSES & SINGER LLP

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BILLING MEMORANDUM # 255127 THRU 12/31/08

CLIENT 011703 CHORION RIGHT LIMITED
MATTER 011703-0101- DISNEY

BILLING ATTORNEY 0185 MARTIN SCHWIMMER

***** UNBILLED TIME *****

TIMEKEEPER

DATE	TIME	RATE	VALUE	DIARY
11/08/08	.30	495.00	148.50	Review correspondence from Razzano re conflict.
11/10/08	2.50	495.00	1,237.50	Review e-mail from N Durbridge; conference with client; research re conflict issue;
11/11/08	2.30	495.00	1,138.50	Review correspondence from Razzano; conference re same.
11/12/08	1.80	495.00	891.00	Conference re magistrates conference; review evidence from THOIP re Razzano.
11/14/08	.40	495.00	198.00	Review letter brief re conflict.
11/18/08	.80	495.00	396.00	Review drafts of declarations.
11/20/08	.50	495.00	247.50	Review revision of brief and declaration.
11/21/08	1.80	495.00	891.00	Review final motion; review correspondence from Razzano and client; conference with P Fakler re how to proceed re motion for costs.
11/29/08	1.00	495.00	495.00	Review response papers from Razzano.

TIMEKEEPER TOTAL

0487 JORDAN, GREENBERGER

DATE	TIME	RATE	VALUE	DIARY
11/11/08	3.40	225.00	765.00	Intro to case, discuss conflict issue w/Paul and begin research for disqualification motion.
11/12/08	5.70	225.00	1,282.50	Read disqualif. cases and conf. w/Paul, pull samples from PACER, review client documents.
11/13/08	2.80	225.00	630.00	Research vicarious clients and conflicts, review letter to Judge.
11/17/08	5.00	225.00	1,125.00	Begin drafting disqualification papers, memo, notice of motion, declarations, gather exhibits.
11/18/08	6.00	225.00	1,350.00	Edits to affidavits, memo and notice of motion, gather exhibits.
11/19/08	4.30	225.00	967.50	Organize exhibits; edits to memo, review edits from client and incorporate, add facts to brief from declaration.
11/20/08	5.80	225.00	1,305.00	Edits to memo (attorney fees), draft Fakler affirmation and finalize exhibits.
11/21/08	1.00	225.00	225.00	Finalize docs for filing, conf. w/Paul and Ray Torres.

TIMEKEEPER TOTAL

34.00 7,650.00

0637 TORRES, RAYMOND

DATE 01/09/09

MOSES & GINGER LLP
BILLING MEMORANDUM # 255127 THRU 12/31/08

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CLIENT 011703 CHORION RIGHT LIMITED
MATTER 011703 0101 DISNEY

BILLING ATTORNEY 0195 MARTIN SCHWIMMER

***** UNBILLED TIME *****

TIMEKEEPER	DATE	TIME	RATE	VALUE	DIARY
					[REDACTED]
	11/20/08	1.40	205.00	82.00	Requested to assist in getting declaration, motions prepared for e-filing tomorrow; obtained first declaration of David Llewellyn and compiled all of his exhibits; prepare declaration and forward to be velo-bound;
	11/21/08	3.50	205.00	717.50	Cite checked brief; forward recommendation to attorney; compiled all exhibits for declaration; prepared declaration with exhibits for attorney's review; scanned declaration with exhibits for ECF filing; received finalized moving brief; checked tables of contents and authorities; finalized and scanned brief; electronically filed brief with declaration and exhibits; prepare cover letter to opposing counsel; prepare shipping label to Judge; forward cover letter to attorney for signature; forward letter and copies of moving papers to opposing counsel by first class mail; prepared cover letter to Judge; forward cover letter and courtesy copy to judge via fedex; prepare appearance for attorney; e-filed appearance;

TIMEKEEPER TOTAL

TOTAL UNBILLED TIME

***** UNBILLED DISBURSEMENTS *****

CLASS	DATE	ATTY	DESCRIPTION	AMOUNT
021 Westlaw	11/30/08	0185	Westlaw	904.52
021 Westlaw	11/30/08	0185	Westlaw	282.59
021 Westlaw	11/30/08	0185	Westlaw	124.13
021 Westlaw	11/30/08	0185	Westlaw	199.43

DATE 01/09/09

MOSES & SINGER LLP
BILLING MEMORANDUM # 255127 THRU 12/31/08

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CLIENT 011701 CHORION RIGHT LIMITED
MATTER 011701-0101- DISNEY.

BILLING ATTORNEY 0185 MARTIN SCHWIMMER

***** UNBILLED DISBURSEMENTS *****

CLASS	DATE	ATTY	DESCRIPTION	AMOUNT
021 Westlaw	11/30/08	0185	Westlaw	497.70
021 Westlaw	11/30/08	0185	Westlaw	10.84
TOTAL Westlaw				2,019.21

060 Velobind/Spiralbind	11/21/08	0201	Velobind/Spiralbind	50.00
060 Velobind/Spiralbind	11/24/08	0201	Velobind/Spiralbind	100.00
TOTAL Velobind/Spiralbind				150.00

TOTAL UNBILLED DISBURSEMENTS

***** UNBILLED DISBURSEMENT SUMMARY *****

CLASS	TOTAL
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Account: MOSES & SINGER LLP, NEW YORK NY (1000665984)
Date Range: November 01, 2008 - November 30, 2008
Report Format: Detail-Account by Client by User by Day (Targeted)

Account by Client by User by Day	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Tax Amount	Total Charge
<hr/>							
Account: 1000665984							
Client 011703-0101-182							
User Name FAKLER,PAUL M (5933366)							
Day 11/10/2008							
Included							
WESTLAW LINES			1,551		\$62.04	\$5.19	\$67.23
KEYCITE		2			\$12.50	\$1.05	\$13.55
TRANSACTIONAL ONLINE FINDS		4			\$40.00	\$3.35	\$43.35
Totals for Included		6	1,551		\$114.54	\$9.59	\$124.13
Totals for Day 11/10/2008		6	1,551		\$114.54	\$9.59	\$124.13
Totals for User Name FAKLER,PAUL M (5933366)		6	1,551		\$114.54	\$9.59	\$124.13
Totals for Client 011703-0101-182		6	1,551		\$114.54	\$9.59	\$124.13
Totals for Account: 1000665984		6	1,551		\$114.54	\$9.59	\$124.13
Report Totals - Included		6	1,551		\$114.54	\$9.59	\$124.13
Report Totals		6	1,551		\$114.54	\$9.59	\$124.13

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Account: MOSES & SINGER LLP, NEW YORK NY (1000665984)**Date Range:** November 01, 2008 - November 30, 2008**Report Format:** Detail-Account by Client by User by Day (Targeted)

Account by Client by User by Day	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Tax Amount	Total Charge
Account: 1000665984							
Client 011703-0101							
User Name GREENBERG,JORDAN (6275469)							
Day 11/11/2008							
Included							
WESTLAW LINES			5,308		\$212.32	\$17.80	\$230.12
KEYCITE		7			\$43.75	\$3.66	\$47.41
TRANSACTIONAL ONLINE FINDS		17			\$170.00	\$14.25	\$184.25
TRANSACTIONAL SEARCHES		1			\$113.00	\$9.47	\$122.47
Totals for Included		25	5,308		\$539.07	\$45.18	\$584.25
Totals for Day 11/11/2008		25	5,308		\$539.07	\$45.18	\$584.25
Day 11/13/2008							
Included							
WESTLAW DOCUMENTS			9		\$112.50	\$9.43	\$121.93
TRANSACTIONAL ONLINE FINDS		7			\$70.00	\$5.87	\$75.87
TRANSACTIONAL SEARCHES		1			\$113.00	\$9.47	\$122.47
Totals for Included		8	9		\$295.50	\$24.77	\$320.27
Totals for Day 11/13/2008		8	9		\$295.50	\$24.77	\$320.27
Totals for User Name GREENBERG,JORDAN (6275469)		33	5,317		\$834.57	\$69.95	\$904.52
Totals for Client 011703-0101		33	5,317		\$834.57	\$69.95	\$904.52
Totals for Account: 1000665984		33	5,317		\$834.57	\$69.95	\$904.52
Report Totals - Included		33	5,317		\$834.57	\$69.95	\$904.52
Report Totals		33	5,317		\$834.57	\$69.95	\$904.52

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Account: MOSES & SINGER LLP, NEW YORK NY (1000665984)
Date Range: November 01, 2008 - November 30, 2008
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Account by Client by User by Day	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Tax Amount	Total Charge
<hr/>							
Account: 1000665984							
Client 011703-101							
User Name GREENBERG,JORDAN (6275469)							
Day 11/12/2008							
Included							
WESTLAW LINES			1,288		\$51.52	\$4.31	\$55.83
KEYCITE		2			\$12.50	\$1.05	\$13.55
TRANSACTIONAL ONLINE FINDS		12			\$120.00	\$10.05	\$130.05
Totals for Included		14	1,288		\$184.02	\$15.41	\$199.43
Totals for Day 11/12/2008		14	1,288		\$184.02	\$15.41	\$199.43
Totals for User Name GREENBERG,JORDAN (6275469)		14	1,288		\$184.02	\$15.41	\$199.43
Totals for Client 011703-101		14	1,288		\$184.02	\$15.41	\$199.43
Totals for Account: 1000665984		14	1,288		\$184.02	\$15.41	\$199.43
Report Totals - Included		14	1,288		\$184.02	\$15.41	\$199.43
Report Totals		14	1,288		\$184.02	\$15.41	\$199.43

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Account: MOSES & SINGER LLP, NEW YORK NY (1000665984)**Date Range:** November 01, 2008 - November 30, 2008**Report Format:** Detail-Account by Client by User by Day (Targeted)

Account by Client by User by Day	Database Time	Transactions	Docs/Lines	Connect Time	Standard Charge	Tax Amount	Total Charge
Account: 1000665984							
Client 11703-101							
User Name GREENBERG,JORDAN (6275469)							
Day 11/12/2008							
Included							
KEYCITE		1			\$6.25	\$0.52	\$6.77
Totals for Included		1			\$6.25	\$0.52	\$6.77
Totals for Day 11/12/2008		1			\$6.25	\$0.52	\$6.77
Day 11/20/2008							
Included							
COMMUNICATIONS					\$2.29	\$0.19	\$2.48
HOURLY CONNECT				633	\$7.38	\$0.61	\$7.99
STANDARD	32				\$4.00	\$0.33	\$4.33
SUPER ALLFILES	601				\$186.11	\$15.58	\$201.69
WESTLAW DOCUMENTS			5		\$62.50	\$5.24	\$67.74
KEYCITE		1			\$6.25	\$0.52	\$6.77
TRANSACTIONAL ONLINE FINDS		13			\$130.00	\$10.91	\$140.91
Totals for Included	633	14	5	633	\$398.53	\$33.38	\$431.91
Totals for Day 11/20/2008	633	14	5	633	\$398.53	\$33.38	\$431.91
Totals for User Name GREENBERG,JORDAN (6275469)	633	15	5	633	\$404.78	\$33.90	\$438.68
User Name TORRES,RAY (5841031)							
Day 11/21/2008							
Included							
COMMUNICATIONS					\$1.39	\$0.10	\$1.49
HOURLY CONNECT				388	\$4.51	\$0.38	\$4.89
STANDARD	388				\$48.55	\$4.09	\$52.64
Totals for Included	388			388	\$54.45	\$4.57	\$59.02
Totals for Day 11/21/2008	388			388	\$54.45	\$4.57	\$59.02
Totals for User Name TORRES,RAY (5841031)	388			388	\$54.45	\$4.57	\$59.02
Totals for Client 11703-101	1,021	15	5	1,021	\$459.23	\$38.47	\$497.70
Totals for Account: 1000665984	1,021	15	5	1,021	\$459.23	\$38.47	\$497.70
Report Totals - Included	1,021	15	5	1,021	\$459.23	\$38.47	\$497.70
Report Totals	1,021	15	5	1,021	\$459.23	\$38.47	\$497.70